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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,574	12/12/2003	Yvette Fleury Rey	88265-6938	8640

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/733,574	FLEURY REY ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1, 17, 18,19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 2, it is not clear what the mixture is; it is suggested applicant insert the word --- of --- before " amino" to make the claim clearer. Also, the claim is vague and indefinite because it is incomplete. While the claim recites the step of conducting a bioconversion, it is not clear what this step is.

In claim 17, what does applicant mean by dough in a non fermented form.

Claim 18 is vague and indefinite; it is not clear if the fermenting step is excluded or included.

Claim 19 has the same problem as claim 18.

Claims 1-4, 6-7, 9-19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for process of preparing an aromatizing composition using specific amino acid and reducing sugar, does not reasonably provide enablement for a process using any amino acid and reducing sugar. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to carry out the invention commensurate in scope with these claims.

The specification disclose a process of preparing an aromatizing composition by reacting amino acids and sugar in the presence of yeast. Page 4 of the specification discloses arginine, citrulline, glutamine, ornithine and proline as the amino acids and

fructose, glucose and rhamnose as the sugar. There is no disclosure of any other amino acid or sugar. It cannot be determined that any other amino acid and sugar will generate the same aromatizing composition. The process is not enabling for any and all amino acid and sugar.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 7-9, 11-13, 14-16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Bel Rhlid et al (6432459).

Bel Rhlid et al disclose a process for preparing a flavoring composition. The process comprises the steps of reacting a mixture of peptides and sugar with yeast for 2-72 hours at a temperature of 20-50 degree C and a pH of 7-11 and subjecting the reaction mixture after the bioconversion to a separation step to recover the supernatant

which contain the flavoring composition. The supernatant can be either maintained in liquid form or be converted into a powder. The sugar used is glucose and the yeast is Candida vesatilis, Saccharomayces bayanus or Debaromyces hansenii. The flavoring composition can be subjected to additional heat treatment at a temperature of 100-250 degreeC for 10-120 minutes. The flavoring composition can be added to various constituents and ingredients to baked in dough. Example 5 show the addition of the flavoring composition to bread buns. The method of making the bread buns comprises the steps as set forth in example 5. (see col. 2 lines 4-64, col. 3 lines 1-22)

The reference discloses all the limitations of the above cited claims.

Claims 1,4, 5,7,8,14, are rejected under 35 U.S.C. 102(b) as being anticipated by Jp 74006108.

Jp 74006108 discloses a process for preparing flavor additive. The additive is prepared by fermenting a solution containing yeast, saccharides and any one of skim, milk, casein or whey. The saccharides used can be glucose, fructose, sucrose etc..

The reference meets the limitation of the above cited claims. Casein, whey are proteins which are peptides and both casein and whey contain amino acid such as arginine, proline and glutamine. The mixture as claimed in claim 4 is inherent in the prior art additive because the same components are used as the starting materials.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6,10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bel Rhlid et al.

Bel Rhlid et al do not disclose that the peptides are dipeptide or tripeptides, the molar ratio of the amino compound and the reducing sugar and the dough is in a non-fermented form.

Bel Rhlid et al disclose peptides are used; thus, it would have been obvious to one skilled in the art to use dipeptide or tripeptide. It would have also have been within the skill of one in the art to determine the molar ratio of the amino compound and sugar which would optimize the reaction; this can readily be determined through routine experimentation. Bel Rhlid et al disclose the flavoring composition is added to baked products; thus, it would have been obvious to add it to fermented dough or non fermented dough when one wants to obtain the flavoring. This would have been an obvious matter of choice.

With respect to the IDS, it is unclear why patent no. 4633168 was cited because this reference does not relate to food product.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Parliament et al, Haas et al and Jaeggi disclose processes for preparing flavoring compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 3, 2005

LIEN TRAN
PRIMARY EXAMINER
Group 1700